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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,403	07/02/2001	Kenneth William Hunt	VAC.705.US	9206
60402	7590	06/05/2007		
KINETIC CONCEPTS, INC. ATTN: LEGAL DEPARTMENT INTELLECTUAL PROPERTY P.O. BOX 659508 SAN ANTONIO, TX 78265			EXAMINER HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			06/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/807,403

Applicant(s)

HUNT ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

MJH

Continuation of 3. NOTE: Applicant amended claim 2 to specifically recite a wall suction point, rather than a suction source. Applicant amended claim 14 to eliminate the claimed tube for connecting the canister to a wall suction point.

Continuation of 11. does NOT place the application in condition for allowance because: With respect to applicant's arguments regarding a request for withdrawal of finality: Applicant argues that Examiner introduced a new grounds of rejection for claim 8. Examiner disagrees. Claim 8 was rejected in the final action mailed March 22, 2007 over Hunt in view of Wurster, which is the same grounds of rejection of claim 8 in the non-final action mailed September 25, 2006. Applicant further argues that Examiner disregarded the difference in scope of claim 8 compared to claims 5-7. This also is not true, as the rejection of claim 8 clearly states that "Hunt does not explicitly teach a wall suction source". By separating the rejections, Examiner did not omit or disregard any claim limitations, nor introduce any new grounds of rejection that were not necessitated by applicant's amendment to claim 8.

Applicant further argues that Hunt does not teach a shut-off valve, which closes an outlet from the canister when it is full. This same argument was addressed in the final action and will only briefly be readdressed herein. A spigot is by definition a type of valve. It is considered in the final action as a valve that functions as a shut-off valve as, again, that's what a spigot is and does; it is a valve that shuts off flow of a gas or liquid. There is no structural description nor claim limitations directed to the shut off valve. It is merely described by the phrase "which closes an outlet from the canister when it is full". This phrase describes what the valve does, rather than what it is, therefore the phrase constitutes functional language that is given little patentable weight.

Applicant's arguments regarding claim 8 are based upon arguments presented with respect to claim 1, which have been addressed *supra*.

As to applicant's arguments regarding claims 2 and 14, such claims have been amended so as to cause further search and consideration after a final action has been mailed. Hence applicant's arguments regarding claims 2 and 14 will not be addressed herein as being based upon an amendment that has not been entered..